IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTIION

Writ Petition No. 8185 of 2006

Shri Ghanshyam Jangaldas
Sukhwani ..Petitioner

vs.

1. Smt.Anandibai Bhau Bhalerao
and others ..Respondents

Shri P.M.Gore for petitioner.
Shri V.G.Mujmumdar for respondents.

CORAM: S.C.DHARMADHIKARI J.
30th **NOVEMBER, 2007**

P.C.

1. This is a petition challenging the order below Exh.74 in Special Civil Suit No.1802 of 1993 which suit has been filed for specific performance of the agreement dated 18th September, 1991 executed between the parties to the suit.

2. The petitioner applied vide Exh.74 for amendment. In the amendment application all that he requested was that he be allowed to incorporate the alternate/additional relief. The amendment application which is filed is one page application and after prayer clause (G) he seeks to incorporate prayer clause (G-1).

3. This amendment is opposed by the present respondents on the ground that the issues will arise only after the specific performance is granted and in any event all obligations under the agreement with regard to permission have been taken over by the plaintiff himself.

4. The petitioner/plaintiff is aggrieved by the fact that the case of the respondent/defendant is accepted and his amendment application is rejected.

5. In my view, the impugned order is on the face of it untenable. The learned Judge was not required to go into the aspect of obligations under the agreement. It was not that the merits of the amendment or controversy in the suit was an issue at the stage of considering Exh.74. All that was necessary was whether the proposed amendment would amount to changing the cause of action or that the amendment as proposed is not bonafide or that the same is incapable of being granted otherwise. The Trial Court does not find fault with the proposed amendments on these

grounds but proceeds to reject the application on the ground that the permission has to be obtained from the concerned authority by the petitioner/plaintiff.

6. Shri Muzumdar was unable to support this finding. Even otherwise, in my view, the amendment application must be considered in the light of the settled principles and at that stage it is not necessary to pronounce upon the merits of the controversy. That amendment application is not considered in the light of this settled principle is clear. The amendment is only formal. If the application prays for amendment to the plaint only to incorporate a prayer or relief clause, then, merely because the same was allowed to be incorporated does not mean that the relief prayed therein was granted. That is a matter which must be decided when the suit is being tried. All pleas in that behalf of both sides are open for being urged. The amendment application being allowed does not mean that such pleas are accepted.

7. In the result, writ petition succeeds. The impugned order is quashed and set aside.

Amemdment application is allowed. Amendment to be carried out within two weeks from today. The additional written statement, if any, to be filed within four weeks from the date of receipt of amended copy of the plaint. The suit being of 1993 it is expected to be decided expeditiously and within a period of six months from the date of filing of the additional written statement. No costs.

(S.C.DHARMADHIKARI J.)